



St. Louis Southwestern Railway Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

1 5740
JUL 25 1988-2 40 PM
INTERSTATE COMMERCE COMMISSION

1 5740
RECORDATION NO. 5740

8 207A057

JUL 25 1988-2 40 PM July 20, 1988

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423

No. JUL 25 1988
Date
File # 26102

Washington, D. C.

Re: St. Louis Southwestern Railway Company - Conditional
Sale Agreement and Agreement and Assignment

Enclosed please find an original and one copy of the following documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The documents submitted are as follows:

- (i) Conditional Sale Agreement, a Primary Document, dated as of July 1, 1988
- (ii) Agreement and Assignment, a Secondary Document, dated as of July 1, 1988

The documents referred to in (i) and (ii) are being filed concurrently.

We hereby request that the assignment referred to in (ii) be cross-indexed.

The names and addresses of the parties to the documents are as follows:

Conditional Sale Vendors:

General Electric Company
2901 East Lake Road - Bldg. 14-4
Erie, Pennsylvania 16531

General Motors Corporation
Electro Motive Division
9301 West 55th Street
LaGrange, Illinois 60525

100 OFFICE OF
THE SECRETARY
JUL 25 2 41 PM '88
MOTOR OPERATING UNIT

a Southern Pacific subsidiary

Purchaser:

St. Louis Southwestern Railway Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94015
Attention: Treasurer

Vendor-Assignee:

Irving Trust Company
One Wall Street
New York, New York 10015
Attention: Corporate Trust Dept - Administration

A description of the equipment covered by the documents follows:

- (1) 35 General Electric 4000 horsepower, 4-axle road freight locomotives bearing road numbers 8040-8074
- (2) 15 General Motors 3800 horsepower, 4-axle road freight locomotives bearing road numbers 9620-9634 and serial numbers 876054-1 to 876054-15, respectively.

A fee of \$26.00 is enclosed. Please return the original to:

S. Michael Whang
Brown & Wood
One World Trade Center, 57th Floor
New York, New York 10048

A short summary of the documents to appear in the index as follows:

- (i) Primary document: Conditional Sale Agreement, dated as of July 1, 1988, by and among St. Louis Southwestern Railway Company, General Electric Company, General Motors Corporation, covering 35 General Electric 4000 horsepower, 4-axle road freight locomotives bearing road numbers 8040 to 8074, and 15 General Motors 3800 horsepower, 4-axle road freight locomotives bearing road numbers 9820 to 9834 and serial numbers 870654-1 to 870654-15, respectively.

The addresses of the Parties:

St. Louis Southwestern Railway Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94015
Attention: Treasurer

General Electric Company
2901 East Lake Road - Bldg. 14-4
Erie, Pennsylvania 16531

General Motors Corporation
Electro Motive Division
9301 West 55th Street
LaGrange, Illinois 60525

- (ii) Secondary document: Agreement and Assignment, dated as of July 1, 1988, by and among Irving Trust Company, as Assignee, General Electric Company and General Motors Corporation assigning the Vendors, rights to the Conditional Sale Agreement, dated as of July 1, 1988, by and among St. Louis Southwestern Railway Company, General Motors Corporation and General Electric Company covering 35 General Electric 4000 horsepower 4-axle road freight locomotives bearing road numbers 8040 to 8074, and 15 General Motors 3800 horsepower 4-axle road freight locomotives bearing road numbers 9620 to 9634 and Serial numbers 870654-1 to 870654-15, respectively.

The addresses of the Parties:

Irving Trust Company
One Wall Street
New York, New York 10015
Attn: Corporate Trust Dept. - Administration

General Electric Company
2901 East Lake Road - Bldg. 14-4
Erie, Pennsylvania 16531

General Motors Corporation
Electro Motive Division
9301 West 55th Street
LaGrange, Illinois 60525

Sincerely,



E. F. Grady
Treasurer

Interstate Commerce Commission
Washington, D.C. 20423

7/25/88

OFFICE OF THE SECRETARY

E.F. Grady

Treasurer
Southern Pacific Building
One Market Plaza
San Francisco, Calif. 94105

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/25/88 at 2:50pm, and assigned recordation number(s). 15740 & 15740-A

Sincerely yours,

Nanta L. McEneaney
Secretary

Enclosure(s)

1 5740
RECORDATION NO. _____

JUL 25 1988 - 2 42 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

(Conditional Sale Indebtedness Due 2003)

Dated As of July 1, 1988,

Between Each of

GENERAL ELECTRIC COMPANY,
GENERAL MOTORS CORPORATION,

and

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of July 1, 1988

Between Each of

GENERAL ELECTRIC COMPANY
GENERAL MOTORS CORPORATION,
Builders

and

IRVING TRUST COMPANY,
as Agent,
Assignee

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on July __, 1988, at ____ p.m., recordation number _____. Filed with the Office of the Secretary of State of the State of California pursuant to Chapter 4 of Division 9 of the California Commercial Code on July __, 1988, at ____ p.m., recordation number _____. Filed with the Office of the Secretary of State of Illinois pursuant to Ill. Stat. tit. 26, § 9-302 (1981) on July __, 1988, at __ p.m., recordation number _____. Filed with the Office of the Secretary of State of the Commonwealth of Pennsylvania pursuant to Division 9 of the Pennsylvania Commercial Code on July __, 1988, at __ p.m., recordation number _____.

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of July 1, 1988, between each of GENERAL ELECTRIC COMPANY AND GENERAL MOTORS CORPORATION (collectively the "Builders" or severally the "Builder", or collectively or severally the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Missouri corporation (the "Railroad").

WHEREAS, the Builders severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (the aggregate of such equipment being referred to herein as the "Equipment" and each individual locomotive described in said Schedule B being referred to herein as a "unit" of the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of the Builders Several. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, each of the corporations named in Item 1 of Schedule A hereto (as to the units of Equipment to be constructed by such corporation and sold hereunder), and any successor or successors to its respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the corporations named in Item 1 of Schedule A hereto (as to the units of Equipment to be constructed by such corporation and sold hereunder), and any successor or successors to its respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue

to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The term "actual knowledge", when used with reference to a Default or Event of Default, has the meaning set forth in Section 9 of the Finance Agreement.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called "its Equipment") at its plant set forth in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad and consented to in writing by the Vendor of such Equipment pursuant to the Finance Agreement if the Vendor is the assignee pursuant to this Agreement of such Builder (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) shall be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of Equipment to the Railroad at the place or places specified in Schedule B hereto or at such other place or places as the Railroad and the Builder may agree, switching and freight charges collect, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings or event specified in clause (f), (g), (h), (i) or (j) of Article 17 hereof or if any Event of Default (as described in Article 17 hereof), or event which with lapse of time and/or demand could constitute such an Event of Default (a "Default"), shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or Equipment or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before January 31, 1989, or such other date as the Investors, the Railroad and the applicable Builder may agree upon, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards referred to in Article 2 hereof applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the

Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve any Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto (the "Base Price" or "Base Prices"). Such Base Price or Prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the Base Price or Prices as so increased or decreased. The Purchase Price as of the date hereof for each unit of the Equipment manufactured by General Electric Company shall be \$1,075,000. The Purchase Price as of the date hereof for each unit of the Equipment manufactured by General Motors Corporation shall be \$1,100,000. The "Floor Price", as used herein, of any unit of the Equipment shall mean the lesser of the Base Price and the Purchase Price therefor. If the aggregate Purchase Price of Equipment for which settlement has been or is then proposed to be made under this Agreement is in an amount in excess of \$54,125,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the Builder or Builders (and any assignee of the Builders) shall, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price under this Agreement to not more than \$54,125,000, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment shall be divided into groups of units of the Equipment, accepted by and delivered to the Railroad (each such group being hereinafter called a "Group") as follows. The term "Closing Date" shall mean

the dates agreed upon by the Railroad and the Builders for settlement of a Group; provided, however, that there shall not be more than one Closing Date per month during the period from July, 1988 to January 31, 1989, inclusive, provided that the final Closing Date shall occur on or before January 31, 1989. The Railroad shall provide notice to the Investors and Agent of each Closing Date so determined as soon as practicable but in no event less than fifteen (15) business days prior to each such Closing Date. On each Closing Date designated by the Railroad and a Builder delivering units of Equipment prior to such Closing Date, settlement will be made for the units of Equipment comprising all or a portion of the Group delivered by a Builder to, and accepted, by the Railroad but not yet settled for, on or prior to the date eight (8) business days prior to such Closing Date. Equipment manufactured by General Electric Company ("GE") will be delivered to the Railroad at GE's factory in Erie, Pennsylvania or at such other location as the Railroad and GE may agree upon. Equipment manufactured by General Motors Corporation ("GM") will be accepted by and delivered to the Railroad at a place (other than the State of California) to be mutually agreed upon within eight (8) days prior to delivery (the "GM Place of Delivery"). A final Closing Date for each Builder shall be agreed upon by the Railroad and the appropriate Builder and shall occur no later than eight (8) business days after the date of acceptance by and delivery to the Railroad of the last unit of such Builder's Equipment at the appropriate place of delivery for such Builder referred to above. An invoice or invoices and the Certificate or Certificates of Acceptance shall be presented by each Builder six (6) business days prior to each Closing Date relating to the delivery of its units of Equipment specified above. The closing on each Closing Date shall take place as provided in the Assignment.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment together with interest on the unpaid portion thereof, as follows:

(a) on each Closing Date the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the "Invoiced Purchase Prices"), exceeds (y) the sum of (i) the aggregate of the Floor Prices for all units of the Equipment for which settlement has theretofore and is then being made, (ii) the aggregate amount, if any, by which the Base Prices of any such units of Equipment exceed the Invoiced Purchase Prices therefor, and (iii) any

amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 13 consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all of the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "Conditional Sale Indebtedness Due 2003").

On each Closing Date, the Railroad will deliver to the Vendor, with copies to the Investors, a certificate setting forth the amounts referred to in paragraphs (a) and (b) above. In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate Builder at least fifteen days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by each Builder that any preliminary invoice or invoices presented by such Builder in respect of any Group shall be in an amount not in excess of the final Purchase Price of such Group.

The installments of the Conditional Sale Indebtedness Due 2003 payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on July 1 in each year commencing on July 1, 1991, to and including July 1, 2003 (the "maturity date"); provided, however, that anything contained herein to the contrary not withstanding, the final payment shall be in an amount sufficient to pay in full the remaining unpaid principal balance of the Conditional Sale Indebtedness Due 2003, with accrued interest thereon and any other sums secured by this Agreement. The unpaid portion of the Conditional Sale Indebtedness Due 2003 shall bear interest from the Date of Deposit (as defined in the Finance Agreement) at the rate of 10.04% per annum. Such interest shall be paid by the Railroad, to the extent accrued, on January 1 and July 1 in each year (severally an "Interest Payment Date"), commencing January 1, 1989. If a payment date is not a business day at the place of payment, the payment may be made on the next business day, and no interest shall accrue for the intervening period.

Immediately upon the earlier to occur of (1) the receipt by the Railroad of the invoice or invoices and the Certificate or Certificates of Acceptance presented by a Builder pursuant to

this Article 4 with respect to a Closing Date and (2) the Railroad's agreement with a Builder as to a Closing Date, the Railroad shall provide notice by telephone to the Vendor, the Agent and Brown & Wood, special counsel for the Vendor pursuant to the Assignment, promptly followed by written notice, of the Closing Date. The Railroad further agrees that the Officers' Certificate to be delivered pursuant to subparagraph (c) of Section 4 of the Assignment shall certify as to the Fair Market Value (as defined in Article 8 hereof and determined by the Railroad without resort to the appraisal procedure set forth in Paragraph 14 of the Finance Agreement) of the units of Equipment referred to in such subparagraph (c).

All interest under this Agreement shall be calculated on the basis of actual days elapsed in a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at a rate per annum (the "Overdue Rate") equal to the greater of (i) 11.04% or (ii) a rate equal to the sum of 1% per annum plus the rate of interest publicly announced by Morgan Guaranty Trust Company of New York from time to time in New York City as its prime rate, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding; provided, however, that the Overdue Rate shall in no event be greater than the rate permitted under applicable usury laws.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All payments provided for in this Agreement shall be made by wire transfer, or other transfer acceptable to the Investors and the party to receive such payment, (to such account as is designated in writing by the parties hereto which are entitled to any such payment or the assignee of such parties) of immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

The Railroad agrees that, notwithstanding any provision of this Agreement or of any other agreement or instrument, or any presumption of any present or future law to the contrary, this Agreement shall not terminate except as expressly provided herein, and the Railroad's obligation to pay all annual install-

ments of the Conditional Sale Indebtedness Due 2003 plus interest accrued thereon as provided in this Article 4 and other sums payable hereunder is fully recourse and is absolute and unconditional and shall not be subject to any abatement, reduction, setoff, defense, counterclaim or recoupment for any reason whatsoever.

The Railroad hereby waives, to the extent permitted by laws, all right to terminate, cancel, revoke or quit this Agreement, except in accordance with the express terms of this Agreement. If for any reason this Agreement shall be invalid or unenforceable, or if this Agreement shall be terminated in whole or in part by operation of law or otherwise (except as expressly provided in this Agreement), the Railroad nonetheless agrees to pay to the Vendor each annual installment of the Conditional Sale Indebtedness Due 2003 plus interest accrued thereon as provided in this Article 4 at the time such payments would have become due and payable (including, without limitation, upon the exercise of any of the Vendor's remedies under Article 18 hereof) in accordance with the terms of this Agreement had such invalidity, unenforceability or termination in whole or in part not occurred.

In the event the Vendor, pursuant to Article 16 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it in Federal or other immediately available funds at such address as shall be supplied to the Railroad by the assignee. If there shall be more than one assignee, the Railroad shall make such payments in Federal or other immediately available funds to each assignee in such proportions and at such addresses as shall be specified in an instruction jointly executed by or on behalf of such assignees and delivered to the Railroad.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts (except gross receipts taxes in the nature of or in lieu of sales or use taxes), excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings

arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement. In the event the Vendor pays any such impositions directly, it shall give notice thereof to the Railroad. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its Agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof, including such replacements as provided in Articles 8, 9 and 14 hereof, and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation with respect to any such accessions not supplied by it.

Except as otherwise specifically provided in Article 8 hereof, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor on the date which is the later to occur of (i) the date on which the Conditional Sale Indebtedness Due 2003, together with interest thereon, including any interest payable hereunder at the Overdue Rate, and all other amounts required to be paid by the Railroad as herein provided (other than amounts which may thereafter be payable pursuant to any obligation (an "Indemnity Obligation") of the Railroad hereunder to indemnify or reimburse the Vendor which, as provided herein, shall survive the termination of this Agreement) shall have been paid in full by the Railroad, and all

other obligations herein contained shall have been performed by the Railroad, and (ii) the date on which all amounts payable pursuant to an Indemnity Obligation required to be paid on or before such date have been paid. However, the Vendor, if so requested by the Railroad at that time, will, at the expense of the Railroad and at the written direction of the Investors (as defined in the Finance Agreement), (a) execute a bill or bills of sale for the Equipment, without representation or recourse, transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 23 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Vendor shall not be responsible for the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to deliver such certificate to the Railroad within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending the lien and security interest of this Agreement to cover such Equipment as a first lien thereon, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Interest Filed with Interstate Commerce Commission" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement, supplementing this Agreement, of new number or numbers to be substituted therefor, which statement previously shall have been

filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement and any financing statement in respect of the Equipment shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates (as defined in Article 11 hereof).

ARTICLE 8. Prepayment of Conditional Sale Indebtedness Due 2003; Replacement Equipment.

A. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or possessed or controlled by any person (other than an affiliate as defined in Article 11 hereof) without the Railroad's consent for more than 15 days after a Vice President of Finance of the Railroad has actual knowledge of any such event but in no event more than 90 days after the occurrence of such event (provided that such possession or control did not originate from an event or act which would constitute an Event of Default under clause (k) of Article 17 hereof), or taken or requisitioned by condemnation or otherwise, or confiscated, attached, impounded, seized or held by any foreign governmental authority for any cause whatsoever, and not released pursuant to a final, nonappealable order or act into the custody of the Railroad, for more than 15 days after a Vice President of Finance of the Railroad has actual knowledge of any such event set forth above but in no event more than 90 days after the occurrence of such confiscation, attachment, impoundment, seizure or holding (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in writing in regard thereto. When the aggregate Replacement Value (as defined in the second paragraph of subparagraph C of this Article 8) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$5,000,000, the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor an Officers' Certificate setting forth the Replacement Value of each unit of the Equipment having suffered a Casualty Occurrence and, subject to the provisions of subparagraph B of this Article 8, shall on the Interest Payment Date next succeeding the date of filing of such certificate prepay a principal amount of Conditional Sale

Indebtedness Due 2003 (after payment of interest thereon due on such date) equal to the aggregate Replacement Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with all accrued interest on such sum so being prepaid, but without premium.

For purposes of this Agreement, "Officers' Certificate" means a certificate signed by two Officers, who consist of the Chairman, the President, the Secretary, Treasurer, the Chief Mechanical Officer or a Vice-President of the Railroad ("Officers").

B. Substitution of Equipment in Lieu of Prepayment. If and so long as no Event of Default (as defined in Article 17 hereof) shall have occurred and be continuing hereunder, in lieu of making all or any portion of any prepayment of the Conditional Sale Indebtedness Due 2003 as provided in the preceding subparagraph A of this Article 8, the Railroad may, on or before the applicable date for payment, cause to be transferred to the Vendor a replacement unit or units of equipment consisting of locomotives manufactured by either of the Builders of the same or superior capacity and quality and having an equivalent value as compared to the units of Equipment having suffered a Casualty Occurrence first put into service by the first user thereof or remanufactured no earlier than July 1, 1988, and receive credit against the principal amount of Conditional Sale Indebtedness Due 2003 it would otherwise have been required to prepay in an amount equal to the value thereof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the Fair Market Value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year, or portion thereof, in service, provided that such unit or units of replacement equipment shall have a remaining useful life at least as long as that which the unit of Equipment being replaced would have had but for the Casualty Occurrence. Any unit of replacement equipment must conform to all applicable regulatory requirements of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment to the extent that such laws and rules affect the title, operation or use of the Equipment at the time of replacement. In connection with the transfer to the Vendor of any unit of replacement equipment pursuant to this subparagraph B, the Railroad will deliver to the Vendor and the Investors an Officers' Certificate, as set forth in the last paragraph of this subparagraph B, certifying as to the remaining useful life of such unit and compliance with all regulatory requirements to the effect set forth above.

For purposes of this Agreement, "Fair Market Value" means an amount determined on the basis of, and equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing purchaser under no compulsion to buy and an informed and willing seller under no compulsion to sell. Such unit of replacement equipment shall be in the United States and be of the same or superior capacity and quality as compared to the unit of Equipment having suffered a Casualty Occurrence. Fair Market Value shall be determined in accordance with the provisions of Paragraph 14 of the Finance Agreement.

In case the Railroad elects so to transfer replacement equipment to the Vendor in lieu of making all or any part of any prepayment of the Conditional Sale Indebtedness Due 2003, the Railroad shall deliver to the Vendor at or after the time of such replacement and prior to the applicable payment date an Officers' Certificate as to compliance with the foregoing provisions of this subparagraph B. Such certificate shall be accompanied by an opinion of counsel, addressed to the Vendor, covering the matters set forth in the first paragraph of subparagraph D below.

C. Prepayments; Definitions of Replacement Value. In case any money is applied to prepay Conditional Sale Indebtedness Due 2003 pursuant to this Article 8, it shall be credited against the last installment of the aggregate Conditional Sale Indebtedness Due 2003 thereafter falling due and, to the extent of any excess of such prepayment over the last installment, the next preceding installments, in whole or in part, provided that any such installment shall be credited in whole before the next preceding installment is credited.

The Replacement Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness Due 2003 (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to the applicable Casualty Occurrence bears to the original Conditional Sale Indebtedness Due 2003. The Replacement Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the value thereof (determined as provided in subparagraph B of this Article 8) as the unpaid Conditional Sale Indebtedness Due 2003 (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made

with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness Due 2003 (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

D. Title to Replacement Units. The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation with respect to any replacement unit or units either (i) not manufactured by it or (ii) rebuilt at any time by any person other than such Builder. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, refile, record or deposit all such documents (including supplements to this Agreement), financing statements or continuation statements and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and the lien and security interest created hereby and to protect the rights of the Vendor hereunder and its status as first priority lienholder with respect to such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence in respect of which the Railroad shall have paid to the Vendor the Replacement Value and/or shall have caused to be transferred to the Vendor replacement equipment, the Vendor shall, at the written direction of the Investors, upon request and at the expense of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without representations or warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

E. Payment of Insurance Proceeds. Upon (i) the repayment in full of the principal amount of the Conditional Sale Indebtedness Due 2003 required to be prepaid pursuant to subparagraph A of this Article 8, or (ii) the transfer of replacement equipment to the Vendor in lieu of making all or any part of such prepayment of the Conditional Sale Indebtedness Due

2003 pursuant to subparagraph B of this Article 8 together with, in the case of a transfer of replacement equipment in lieu of making a part of such prepayment, the payment by the Railroad of the balance of such required prepayment to the Vendor, in each case accompanied by such Officers' Certificate or opinion of counsel as required in this Article 8 in connection therewith, and provided the Vendor shall not have actual knowledge that a Default shall have occurred and be continuing, the Vendor shall forthwith pay to the Railroad the proceeds of all risk, physical loss and damage insurance in respect of the unit or units of Equipment having suffered a Casualty Occurrence that the Vendor has received pursuant to Article 9 hereof.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair, normal wear and tear excepted, with such replacements of parts thereof as may be necessary, at its own expense. The Railroad hereby covenants that all such maintenance, repairs and replacements of parts with respect to any of the units of Equipment will be effected in such manner that, after giving effect thereto, the aggregate Fair Market Value (as determined by the Railroad without resort to the appraisal procedure set forth in Paragraph 14 of the Finance Agreement) of all the units of Equipment delivered to and accepted and purchased by the Railroad hereunder and then subject hereto will be equal to or greater than the aggregate Replacement Value (calculated pursuant to Article 8 hereof) of all such units.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operation involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of counsel to the Vendor, adversely affect the property or rights of the Vendor under this Agreement. The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness Due 2003, together with interest thereon and all other payments required hereby, at its own expense, carry and maintain all risk, physical loss and damage insurance in respect of the Equipment at the time subject hereto in an amount not less than the aggregate Replacement Value of the

Equipment, public liability insurance and other insurance, in each case naming the Vendor and each Investor (if an assignee hereunder of the Builders) as the payee under all such insurance (subject to subparagraph E of Article 8 hereof), in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it; provided, however, the maximum level of self insurance (whether effected through deductible provisions or otherwise) shall not exceed \$20,000,000 at any time. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days prior written notice given to the Vendor and each Investor by such insurer.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1989, the Railroad shall furnish to the Vendor an Officers' Certificate (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) or any substantial modification and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (b) stating that, as at the preceding December 31, the aggregate Fair Market Value of all units of Equipment delivered to and accepted and purchased by the Railroad hereunder and then subject hereto is equal to or greater than the aggregate Replacement Value (as calculated pursuant to Article 8 hereof) of all such units of Equipment; provided, however, that the appraisal procedures and provisions specified in Paragraph 14 of the Finance Agreement need not be complied with in preparing such Officer's Certificate, provided, further, however, that at any time any Investor requests in writing the Railroad shall appoint an independent appraiser, at the Railroad's expense, to make an examination of the books, records and logs of the Railroad relating to the Equipment and to provide, based on such examination, the Investors and the Agent with an appraisal of the Replacement Value of such Equipment. If, in the sole judgment of such appraiser, such an examination is not sufficient to permit the appraiser to make a reasonably accurate determination of such value, the Railroad, at its expense, will (i) provide sufficient information to the appraiser as to the then current location and destination of each unit of Equipment and (ii) provide access to all or any portion of the units of Equipment that the appraiser wishes to inspect so as to enable it to make such determination. In no event will the Railroad be obligated to assemble the units of Equipment to facilitate such

inspection, and (c) stating that, in the case of all Equipment covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as a Event of Default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the Railroad and any affiliate shall have the full right of use thereof by lease or otherwise upon the railroad lines owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any affiliate, or over which it has trackage rights, or upon the lines of connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement, and the Railroad may receive compensation for such use; provided, however, that the Railroad agrees not to use, assign or permit the assignment of any unit of the Equipment to service involving the operation and maintenance thereof outside the United States of America. The word "affiliate", as used in this Article 11 and in Article 7 thereof, shall mean a railroad corporation organized under the laws of the United States of America or of any state thereof or of the District of Columbia which, directly or indirectly controls, or is controlled by, or is under common control with, the Railroad.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit or part thereof; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of counsel to Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or such unit or part thereof or otherwise under this Agreement; provided further, however, that the Railroad shall have maintained a reserve for such claims in accordance with generally accepted accounting principles ("GAAP"). If any such claims shall have been made against the Vendor directly and paid by the Vendor, or if any amounts shall have been paid by the Vendor in discharge of liens, charges or security interests upon the Equipment, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amount so paid by the Vendor shall be

secured by and under this Agreement; provided, however, that prior to paying any such claim, Vendor shall give notice thereof to the Railroad and afford the Railroad a reasonable opportunity to consult with the Vendor, and the parties shall thereupon consult in good faith, as to the appropriate response to such claim; and provided further, however, that the Vendor shall not be bound by any such consultation and that such consultation or Vendor's refusal to be bound thereby shall not affect Vendor's right to reimbursement under this Article 12. Such covenant of reimbursement shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairman's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad hereby agrees to indemnify the Vendor against any liability or expense of any kind or nature whatsoever, including reasonable counsel fees, that may be imposed on, incurred by or asserted against the Vendor in any way relating to or arising out of this Agreement, the Finance Agreement or the Assignment or any other document contemplated by or referred to herein or therein or the transaction contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof, and against the cost and expenses of defending itself against any claim or liability in accordance with the exercise or performance of its powers or duties, except liability resulting from its willful misconduct or negligence. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builders' Representations and Warranties. Each Builder represents, assuming the completeness and accuracy of the representations of the Investors (as defined in the Finance Agreement) set forth in Paragraph 10 of the Finance Agreement, that it has not entered into this Agreement and is not entering into the Assignment, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"));

The agreement of the parties relating to each Builder's warranty of material and workmanship, is set forth in Item 2 of Schedule A hereto and the agreement of the parties relating to patent indemnification is set forth in Item 3 of said Schedule A. The agreement of the parties relating to the limitation of liability of General Electric Company is set forth in Item 2(a) and Item 3(a) of said Schedule A.

The Railroad hereby agrees that title to any unit of equipment used to replace a unit of Equipment pursuant to the agreement of the parties relating to patent indemnification as set forth in Item 3 of Schedule A hereto and Section 3 of the Assignment shall vest in the Vendor. The Railroad will cause any such replacement unit or units to be marked as provided in Article 7 hereof. Any and all replacements of equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units subsequent to its transfer to the Vendor shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, refile, record or deposit all such documents, financing statements or continuation statements and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the rights of the Vendor hereunder and its status as first priority lienholder with respect to such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. The Railroad further agrees to apply any refunds of the Purchase Price pursuant to Item 3 of Schedule A hereto to the immediate prepayment of a principal amount of the Conditional Sale Indebtedness Due 2003 equal to the aggregate Replacement Value as of the date of such payment of the unit or units of Equipment for which such refunds are being made, together with all accrued interest on such sum so being prepaid, plus a Yield Maintenance Premium (as hereinafter defined) on the principal amount so prepaid, and to pay to the Vendor any deficiency in the aggregate amount of such refunds in making such prepayment with interest. Such prepayment shall be accompanied by an Officers' Certificate setting forth the aggregate Replacement Value of such units, the amount of accrued interest with respect thereto, the amount of the Yield Maintenance Premium, and any other related matters. All such prepayments shall be credited against the installments of the Conditional Sale Indebtedness Due 2003 falling due in the same manner as prepayments made in connection with Casualty Occurrences pursuant to Article 8 hereof.

ARTICLE 15. Representations and Warranties of the Railroad. The Railroad hereby represents and warrants, as of the date hereof, to the Vendor:

(a) ORGANIZATION AND QUALIFICATION. The Railroad is a corporation duly organized and validly existing in good standing under the laws of the State of Missouri, the Railroad has the corporate power to own its property and to carry on its business as now being conducted, and the Railroad is duly qualified or otherwise authorized as a foreign corporation to do business and in good standing in every jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary. The Railroad has either built or acquired its railroad lines prior to the Interstate Commerce Commission (the "ICC") acquiring jurisdiction over the same or has been issued by the ICC all certificates of public convenience and necessity required for the operation and/or construction of the Railroad's railroad lines, and all such certificates are currently in full force and effect, save and except those involving abandonment, discontinuance or sale proceedings in the ordinary course of business.

(b) VALID AND BINDING OBLIGATIONS. The Railroad has the corporate power and authority to enter into this Agreement, the Acknowledgment of Notice of Assignment attached to the Assignment (as defined in Article 17 hereof) (the "Acknowledgment") and the Finance Agreement (as defined in Article 17 hereof) and to perform its obligations hereunder and thereunder; this Agreement, the Acknowledgment and the Finance Agreement have been duly authorized, executed and delivered by the Railroad and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitute the Railroad's valid and binding obligations, enforceable against the Railroad in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles. The Certificates of Interest are entitled to the benefits of the Finance Agreement and this Agreement.

(c) NONCONFLICTING REQUIREMENTS. The Railroad is not in violation of or in default under any material term or provision of any charter, by-law, partnership agreement, mortgage, indenture, agreement, instrument, statute, rule, regulation, judgment, decree, order, writ or injunction applicable to it.

(d) ACTIONS PENDING. Except as otherwise disclosed in the most recent annual report on Form 10-K or quarterly report on Form 10-Q filed with the Securities and Exchange Commission, as of each Closing Date, there is no action, suit, investigation or

proceeding pending or, to the knowledge of the Railroad, threatened against the Railroad or any properties or rights of the Railroad or any of its Subsidiaries, by or before any court, arbitrator or administrative or governmental body which, if decided adversely to the Railroad, would (i) materially and adversely affect the financial condition of the Railroad or the ability of the Railroad to perform its obligations under this Agreement or the Finance Agreement or (ii) bring into question the authenticity, validity or enforceability, in any respect material to the Vendor or any Investor, of (1) any sale of any Certificate of Interest pursuant to the Finance Agreement or (2) any other transactions contemplated by this Agreement or the Finance Agreement.

As used herein, "Subsidiary" shall mean any corporation organized under the laws of any State of the United States of America or under the laws of any country except the United States of America or a political subdivision of any such country at least 51% of the total combined voting power of all classes of voting stock of which shall, at the time as of which any determination is being made, be owned by the Railroad, or over which the Railroad has effective control, as evidenced by the power to direct or cause the direction of the management and policies of such corporation.

(e) CONFLICTING AGREEMENTS AND OTHER MATTERS. The Railroad is not a party to any contract or agreement or subject to any charter or other corporate restriction which materially and adversely affects its business, property or assets, or financial condition. Neither the execution nor delivery of this Agreement, the Acknowledgment or the Finance Agreement, nor the offering, issuance and sale of the Certificates of Interest (as defined in Article 21 hereof), nor fulfillment of nor compliance with the terms and provisions hereof or thereof will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any lien upon any of the properties or assets of the Railroad pursuant to, the charter or by-laws of the Railroad, any award of any arbitrator or any agreement (including any agreement with stockholders), instrument, order, judgment, decree, statute, law, rule or regulation to which the Railroad is a party or otherwise subject.

(f) DEFAULT UNDER OTHER AGREEMENTS. The Railroad has not and does not contemplate entering into a conditional sale agreement, equipment trust agreement or any other financing or debt instrument secured by rolling stock or locomotives of the Railroad (all such agreements and instruments referred to herein as "Equipment Financing Agreements") which provide for the acceleration of the maturity of any indebtedness or payment obligation

thereunder upon the occurrence of any default or event of default under any other Equipment Financing Agreement pursuant to which (1) any indebtedness for borrowed money, (2) any lease rentals or other obligations or, (3) any agreements or instruments securing any such indebtedness or obligation is owing or guaranteed by the Railroad (a "Cross Default Provision"); provided, however, that a Cross-Default Provision shall not include a mutual Cross-Default Provision contained in related Equipment Financing Agreements executed and delivered as of the same date or substantially concurrent dates relating to a single pool of assets. If the Railroad contemplates, at any time or times, entering into an Equipment Financing Agreement which contains a Cross-Default Provision, it shall so notify the Vendors and execute and deliver to the Vendor, concurrently with the execution of such Equipment Financing Agreement, an amendment supplementing this Agreement by adding a substantially similar Cross-Default Provision, together with an Officers' Certificate and an opinion of counsel, addressed to the Vendor, to the effect that this subsection has been complied with.

(g) GOVERNMENTAL CONSENT. Neither the nature of the Railroad nor any of its businesses or properties, nor any relationship between the Railroad and any other person, nor any circumstances in connection with the execution and delivery of this Agreement, the Assignment, the Finance Agreement or the Acknowledgment or the offering, issuance, sale or delivery of the Certificates of Interest is such as to require any authorization, consent, approval, exemption or other action by or notice to or filing with any court or administrative or governmental body (other than routine filings after the date of closing with the Interstate Commerce Commission, the Securities and Exchange Commission and/or state Blue Sky authorities) in connection with the execution and delivery of this Agreement, the Assignment, the Finance Agreement or the Acknowledgment or the offering, issuance, sale or delivery of the Certificates of Interest or fulfillment of or compliance with the terms and provisions hereof or thereof, or, if any such authorization, consent, approval, exemption or other action or notice or filing is necessary, it has been obtained, given or made.

(h) DISCLOSURE. Neither this Agreement nor any schedules attached hereto (other than Schedule A) nor any other document, certificate or statement furnished to the Vendor by or on behalf of the Railroad in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact peculiar to the Railroad which materially adversely affects or in the future may (so far as the Railroad can now reasonably foresee) materially adversely effect the business, property or assets, or financial condition of the Railroad and which has not been set forth in this

Agreement or the schedules hereto (other than Schedule A) or in the other documents, certificates and statements (including the Form 10-K for the period ended December 31, 1987 and Form 10-Q for the period ended March 31, 1988) furnished to the Vendor by or on behalf of the Railroad prior to the date hereof in connection with the transaction contemplated hereby.

(i) COVENANTS; NO ADVERSE CHANGE. All agreements, covenants and conditions to be performed or satisfied on or before the date hereof and each Closing Date by the Railroad under the CSA and this Agreement have been performed or satisfied in all material respects; except as may be disclosed in the Railroad's Form 10-Q filed with the Securities and Exchange Commission (the "SEC") for the period ended March 31, 1988, there has been no material adverse change in the business condition, financial or otherwise, of the Railroad since the date of the annual audited financial statements of the Railroad included in the latest annual report of the Railroad filed on Form 10-K or the latest quarterly report filed on Form 10-Q with the SEC nor any condition, event or act which would materially adversely affect the Railroad's ability to perform its obligations pursuant to the CSA or this Agreement. The unaudited financial statements included in the Form 10-Q for the quarter ended March 31, 1988 are fairly presented in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements of the Railroad and its subsidiaries for the year ended December 31, 1987 and present fairly the consolidated financial position of the Railroad and its subsidiaries and their respective results of operations and changes in financial position for each of the periods contained therein.

ARTICLE 16. Assignments etc. The Railroad shall not sell, assign, transfer or otherwise dispose of its rights under this Agreement to any other entity, and it shall not sell or lease or permit any Subsidiary to sell or lease a material amount of its or such Subsidiary's assets or common stock or enter into any merger agreement with or combination with or into any other entity, in each case, unless (i) immediately after giving effect to such assignment, sale or lease, merger or combination, the Railroad, its parent Southern Pacific Transportation Company ("SPTC") and any railroad which acquires or is owned by an acquiror of the Railroad and SPTC, and each entity which is a prime obligor or guarantor under this Agreement and the Finance Agreement, shall be a Class 1 railroad, the Philadelphia Plan Equipment Trust Certificates of which shall be publicly rated "A-2" or better by Moody's Investors Service, Inc. or "A" or better by Standard & Poor's Corporation immediately after, and taking into account, such acquisition, provided that in the event neither such rating agency voluntarily rates such certificates, the Railroad shall, within sixty (60) days following such acquisition, provide the

Agent and each Investor with a private letter rating from either of such rating agencies confirming that the rating of such certificates is either "A-2" or better or "A" or better, as the case may be, (ii) each prime obligor or guarantor under this Agreement and the Finance Agreement referred to in the preceding clause (i) (other than the Railroad) which meet the criteria set forth in such clause (i) shall, by execution of an appropriate instrument satisfactory to the Investors, assume and agree to perform each and all of the obligations and covenants of the Railroad under this Agreement and the Finance Agreement and (iii) prior to and immediately after giving effect to such transaction, no Event of Default (as defined in Article 17 hereof) or Default (as defined in Article 3 hereof) shall exist. Except as the result of an assignment of this Agreement pursuant to the preceding sentence or as provided in Article 11 hereof, Railroad shall not lease or transfer the right to possession of any unit of Equipment.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to and agreements with the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment of the Equipment and this Agreement, or in and to a portion thereof, as the case may be, be entitled to all rights, of the Assignor hereunder, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The

Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part hereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builder.

The Railroad will, in connection with each settlement for the Equipment and subsequent to such assignment, (a) deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee and any documents to be furnished by a Builder, and (b) furnish to such assignee such number of counterparts of any other certificate, document or opinion required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of such Builder but subject to any rights of such assignee, enter into an appropriate written agreement with such Builder excluding from this Agreement those units of Equipment of such Builder for which the aggregate Purchase Price shall not have been received, but fully preserving such Builder's security interest in such Equipment in a manner acceptable to such Builder, and the Railroad will, not later than 30 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of the Equipment of such Builder, together with interest from the day such payment was due to the date of payment by the Railroad at the lesser of (x) the highest prime rate of interest charged by any of the four

New York City banks having the largest total assets, in effect on the date such payment was due or (y) the highest rate permitted by law.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any installment of the aggregate Conditional Sale Indebtedness Due 2003 pursuant to Article 4 hereof or any amount owing to the Agent (as defined in the Finance Agreement) pursuant to subparagraph (a)(2) of Paragraph 6 of the Finance Agreement when the same shall become due; or

(b) the Railroad shall fail to make a prepayment of the Conditional Sale Indebtedness Due 2003 or transfer replacement equipment or effect a combination of both as required by Article 8 hereof when such action shall become due; or

(c) Railroad shall fail to pay in full any interest on the Conditional Sale Indebtedness Due 2003 or any interest payable pursuant to subparagraph (c)(2) of Paragraph 6 of the Finance Agreement or any other sum (other than those described in subparagraphs (a) and (b) of this Article 17) payable by the Railroad as provided in this Agreement or in the Finance Agreement within five days after payment thereof shall be due hereunder; or

(d) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof or compliance therewith, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or of any agreement, including the Agreement and Assignment dated as of July 1, 1988 (the "Assignment") among each of the Builders and Irving Trust Company, as agent (the "Agent"), and the Finance Agreement dated as of July 1, 1988 (the "Finance Agreement") by and among the Agent, the Railroad, The Prudential Insurance Company of America, The Franklin Life Insurance Company, Continental American Life Insurance Company, The Provident Mutual Life Insurance Company, and Southland Life Insurance Company, entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provisions satisfactory to the Investors for such compliance; or

(e) any representation or warranty made by the Railroad herein or in Paragraph 10 of the Finance Agreement or in any writing furnished in connection with or pursuant to this Agreement shall be false in any material respect on the date as of which made; or

(f) any decree or order for relief in respect of the Railroad is entered under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law, whether now or hereafter in effect (herein called the "Bankruptcy Law") of any jurisdiction; or

(g) the Railroad makes an assignment for the benefit of creditors or is generally not paying its debts as such debts become due, or petitions or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official, of the Railroad, or of any substantial part of the assets of the Railroad, commences a voluntary case under the Bankruptcy Law of the United States or any proceedings (other than proceedings for the voluntary liquidation and dissolution of a Subsidiary) relating to the Railroad under the Bankruptcy Law of any other jurisdiction; or

(h) any such petition or application is filed, or any such proceedings are commenced, against the Railroad and the Railroad by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than 30 days; or

(i) any order, judgment or decree is entered in any proceedings against the Railroad decreeing the dissolution of the Railroad and such order, judgment or decree remains unstayed and in effect for more than 60 days; or

(j) any order, judgment or decree is entered in any proceedings involving the Railroad decreeing a splitup of the Railroad which requires the divestiture of assets or common stock representing a substantial part, or the divestiture of the stock of a Subsidiary whose assets represent a substantial part, of the consolidated assets of the Railroad and its Subsidiaries (determined in accordance with GAAP) or which requires the divestiture of assets, or stock of a Subsidiary which shall have contributed a substantial part of Consolidated Net Earnings (as defined below) for any of the

three fiscal years then most recently ended, and such order, judgment or decree remains unstayed and in effect for more than 60 days; provided, however, that such order, judgment or decree shall not constitute an Event of Default hereunder if, after giving effect thereto, each entity which is a prime obligor or guarantor under this Agreement and the Finance Agreement shall be a Class 1 railroad, the Philadelphia Plan Equipment Trust Certificates of which are publicly rated "A-2" or better by Moody's Investors Service, Inc. or "A" or better by Standard & Poor's Corporation; or

(k) either (1) any unit of Equipment shall be located outside the United States, or (2) the Railroad shall make or enter into or suffer (i) any unauthorized assignment or transfer of this Agreement or the Finance Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment, (ii) a sale or lease of a material part of its assets or common stock, other than in accordance with the first paragraph of Article 16, or (iii) a merger agreement or other combination other than in accordance with the first paragraph of Article 16; or

(l) the Railroad shall fail to timely deliver to the Vendor any notice or amendment required by Article 15, paragraph (f).

then, (1) if such an Event of Default is an event specified in clause (f), (g), (h), (i) or (j) of this Article 17 (each an "Automatic Event of Default"), the entire indebtedness in respect of the Purchase Price of the Equipment, together with any interest thereon then accrued and unpaid shall become automatically due and payable without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Railroad, and (2) if such an Event of Default is an event specified in any other clause of this Article 17, at any time after the occurrence of such an Event of Default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid and together with the Yield Maintenance Premium (as hereinafter defined), immediately due and payable, without further presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Railroad, provided that the Yield-Maintenance Premium shall be due and payable upon such Declaration of Default only if (x) such event is an Event of Default specified in any of clauses (a) to (e), inclusive, (k) and (l) of this Article 17, (y) the Vendor shall have given to the Railroad, at least 10 business days before such Declaration of Default, written

notice stating its intention so to declare the indebtedness in respect of the Purchase Price of the Equipment to be immediately due and payable and identifying one or more such Events of Default whose occurrence on or before the date of such notice permits such declaration and (z) one or more of the Events of Defaults so identified shall be continuing at the time of such declaration, provided further, that the Yield Maintenance Premium will be paid to the extent, when combined with any other payments required to be made hereunder, such aggregate payment is permitted under applicable usury laws. Upon an automatic acceleration as provided above or a Declaration of Default and thereafter, in each case the aggregate of the unpaid balance of such indebtedness and interest and Yield Maintenance Premium, if any and if applicable, shall bear interest ("Overdue Interest") from the date of such automatic acceleration or Declaration of Default, as the case may be, at the Overdue Rate to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest and Yield Maintenance Premium, if any and if applicable, and with any Overdue Interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an Event of Default under this Agreement.

The Vendor may at its election waive any such Event of Default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence in this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

"Called Principal" shall mean, with respect to the Conditional Sale Indebtedness Due 2003, the principal that is declared to be immediately due and payable pursuant to this Article 17.

"Consolidated Net Earnings" shall mean consolidated gross revenues of the Railroad and its Subsidiaries less all operating and non-operating expenses of the Railroad and its Subsidiaries including all charges of a proper character (including current and deferred taxes on income, provision for taxes on unremitted foreign earnings which are included in gross revenues, and current

additions to reserves), but not including in gross revenues any gains (net of expenses and taxes applicable thereto) in excess of losses resulting from the sale, conversion or other disposition of capital assets (i.e., assets other than current assets), any gains resulting from the write-up of assets (other than the write-up of current assets as a result of revaluations or realignment of currencies), any equity of the Railroad or any Subsidiary in the unremitted earnings of any corporation which is not a Subsidiary, any earnings of any person acquired by the Railroad or any Subsidiary through purchase, merger or consolidation or otherwise for any year prior to the year of acquisition, or any deferred credit representing the excess of equity in any Subsidiary at the date of acquisition over the cost of the investment in such Subsidiary; all determined in accordance with GAAP.

"Discounted Value" shall mean, with respect to the Called Principal of the Conditional Sale Indebtedness Due 2003, the amount calculated by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on a semi-annual basis) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" shall mean, with respect to the Called Principal of the Conditional Sale Indebtedness Due 2003, the yield to maturity implied by the Treasury Constant Maturity Series yields reported (for the latest day for which such yields shall have been so reported as of the business day next preceding the Settlement Date with respect to such Called Principal) in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the remaining weighted average life to final maturity (calculated in accordance with accepted financial practice) for such Called Principal as of such Settlement Date. Such implied yield shall be determined (a) by calculating the remaining weighted average life to final maturity of such Called Principal rounded to the nearest quarter-year and (b) if necessary, by interpolating linearly between Treasury Constant Maturity Series yields.

"Remaining Scheduled Payments" shall mean, with respect to the Called Principal of the Conditional Sale Indebtedness Due 2003, all payments of such Called Principal and interest thereon that would be due on or after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date.

"Settlement Date" shall mean, with respect to the Called Principal of the Conditional Sale Indebtedness Due 2003, the date on which such Called Principal is declared to be immediately due and payable pursuant to this Article 17.

"Yield-Maintenance Premium" shall mean, with respect to the Conditional Sale Indebtedness Due 2003, a premium equal to the excess, if any, of the Discounted Value of the Called Principal of the Conditional Sale Indebtedness Due 2003 over the sum of such Called Principal plus interest accrued thereon as of (including interest due on) the Settlement Date with respect to such Called Principal. The Yield-Maintenance Premium shall in no event be less than zero.

ARTICLE 18. Remedies. At any time during the continuance of an automatic Event of Default or a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or of one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged with copies of such notices promptly provided to the Vendor), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad for a reasonable period until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or

storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of an Automatic Event of Default or a Declaration of Default, the Vendor (after retaking possession of the Equipment hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment (and any insurance proceeds received by it pursuant to Article 9 hereof) in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment (and any such insurance proceeds) shall be given to Railroad by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice, within 30 days after the occurrence of such Event of Default. In the event that the Vendor should elect to retain the Equipment (and any such insurance proceeds) and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment (and any such insurance proceeds) shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid, the Yield-Maintenance Premium, if any, and Overdue Interest, if any, and all other payments due under this Agreement including expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad (and any insurance proceeds received under Article 9 hereof shall be paid to the Railroad); provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the

Equipment, then the Vendor may retain such insurance proceeds but may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of an Automatic Event of Default or a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid, the Yield-Maintenance Premium, if any, and Overdue Interest, if any, and all other payments due under this Agreement including expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad (and any insurance proceeds received under Article 9 hereof shall be paid to the Railroad). The proceeds of such sale and any such insurance proceeds, less the attorney's fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale provided, that the Railroad's bid is for cash not less than the amount due and owing from the Railroad to the Vendor under this Agreement. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof. In

the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale, plus any costs or expenses incurred in obtaining possession of each such unit of Equipment. The obligation of the Railroad contained in the preceding sentence shall survive the termination of this Agreement.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults in payments.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by Railroad at the Overdue Rate. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded and from time to time when required refiled and rerecorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Railroad will further cause all necessary filings and recordings, and, when required, refilings and rerecordings of this Agreement, any assignment hereof and any amendment or supplements hereto or thereto and/or appropriate financing statements or continuation statements to be made, and from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code of the States of California and of Illinois and of the Commonwealth of Pennsylvania (and, if the Railroad changes its chief place of business to, or if the GM Place of Delivery is in, a different state, in any such other state) and in any other place therein or in any other State of the United States of America or the District of Columbia where filing is required by applicable state or Federal law or reasonably requested by the Vendor for the purpose of proper

protection, to the satisfaction of counsel for the Vendor, of its interest in, and its status as first priority lienholder with respect to, the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purposes specified in the immediately preceding sentence of this Article 20. The Railroad will furnish to the Vendor annually an opinion of counsel for the Railroad to the effect that all necessary filings and recordings have been made to protect the interests of the Vendor in, and its status as first priority lienholder with respect to, the Equipment.

The Railroad will promptly furnish to the Vendor certificates or other evidence satisfactory to the Vendor of such filing, registering, depositing and recording.

ARTICLE 21. Payment of Expenses. The Railroad agrees, whether or not the transactions hereby contemplated shall be consummated, to pay, and save each of Vendor and the Investors (as defined in the Finance Agreement) harmless against liability for the payment of, all out-of-pocket expenses including counsel fees (other than the fees and expenses of counsel for each Builder) arising in connection with the transactions contemplated in this Agreement, in the Assignment or in the Finance Agreement, including, without limitation, (i) all present and future recording and filing fees, and all legal, financial and miscellaneous expenses incurred in connection with this Agreement, the Assignment and the Finance Agreement and the transactions herein and therein contemplated, including, but not limited to all taxes, including without limitation, sales, transfer, mortgage registration and similar taxes, applicable to such transactions (together in each case with interest and penalties, if any, and any income tax payable by any Vendor or any Investor in respect of any reimbursement therefor, which may be payable in respect of the execution, delivery and performance of this Agreement, the Assignment, the Finance Agreement, or the execution, delivery or acquisition of any certificates of interest ("Certificates of Interest") issued under or pursuant to the Finance Agreement, (ii) all stenographic and duplication costs and the reasonable fees and expenses of special counsel to the Investors in connection with this Agreement, the Assignment, the Finance Agreement, the transactions contemplated hereby or thereby and any subsequent modification hereof or thereof or consent hereunder or thereunder, (iii) commissions or placement fees, if any, due in connection with such transactions, (iv) the out-of-pocket expenses of the Investors incurred in connection with such transactions, (v) all expenses incurred in connection with the issuance of any

Certificate of Interest either (1) in exchange for the Certificate of Interest (except sale or transfer taxes occasioned by such exchange) or (2) in replacement of a lost, stolen, destroyed or mutilated Certificate of Interest, (vi) the fees, expenses and disbursements of the Agent in connection with the transactions contemplated in this Agreement, the Assignment and the Finance Agreement, including reasonable counsel fees, (vii) all other unsatisfied obligations arising out of, or incurred in connection with, the acquisition of the Equipment or any construction relating thereto, and (viii) the cost and expenses, including reasonable attorney's fees, incurred by the Vendor in enforcing any of its rights under this Agreement, the Assignment or the Finance Agreement or incurred by any Investor in enforcing its rights under any Certificate of Interest or incurred by the Vendor or any Investor in complying with any subpoena or other legal process served upon it in connection with this Agreement, the Assignment, the Finance Agreement or the transactions contemplated hereby or thereby or by reason of any Investor having acquired any Certificate of Interest, including without limitation costs and expenses incurred in any bankruptcy case. The obligations of the Railroad under this Article 21 shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 22. Survival of Representations and Warranties. The representations, warranties and the covenants of the Railroad made herein shall remain operative and in full force and effect regardless of (a) any investigation made by or on behalf of the Vendor, or (b) payment to the Builders for any Equipment hereunder.

ARTICLE 23. Notice. Any notice hereunder to any of the parties designated below shall be delivered to the addresses specified below, or at any other address that a party may designate in writing to the other parties and such notice shall be deemed to have been duly given on the third business day after deposit in the United States mails (certified, return receipt requested), first class postage prepaid, or on the first business day after timely tender to Federal Express or another similar overnight courier or dispatch by Federal Express service or such similar courier, or when received if delivered by hand, addressed as follows:

(a) to the Railroad, at the Southern Pacific Building, One Market Plaza, San Francisco, California 94105, attention of Vice President-Finance;

(b) to GE, at the indicated address for Transportation Systems Business Operations, specified in Item 1 of Schedule A hereto, attention of General Manager - Transportation Systems Marketing Department;

(c) to GM, at the indicated address for its Electro-Motive Division specified in Item 1 of Schedule A hereto, attention of Comptroller;

(d) to Messrs. Brown & Wood, at One World Trade Center, New York, New York 10048, Attention: Richard D. Rudder;

(e) to the Vendor (or the Agent), at One Wall Street, New York, New York 10015, Attention: Corporate Trust Administration;

(f) to the Investors, at their respective addresses set forth in Schedule B to the Finance Agreement; and

(g) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee.

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. Telephone notices to be given to the Vendor (or the Agent) shall be given at (212) 635-1111, attention: Corporate Trust Officer or such other officer as the Vendor may designate. Telephone notices to be given to Messrs. Brown & Wood shall be given at (212) 839-5300, Attention: Richard D. Rudder, Esq. or at such other number and to such other Attorney as Messrs. Brown & Wood may designate.

ARTICLE 24. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 25. Law Governing. The Railroad represents that on the date hereof its chief executive offices are located in the State of California. The Railroad covenants that it will promptly give notice to the Vendor of any change in its chief executive offices. The terms of this Agreement and all rights and

obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording, or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof or any financing statement or other similar instrument in respect of this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 26. Execution. This Agreement may be executed in any number of counterparts, such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

[Corporate Seal]

GENERAL ELECTRIC COMPANY,

by

[Title]

Attest:

Attesting Secretary

GENERAL MOTORS CORPORATION,

[Corporate Seal]

by

[Title]

Attest:

Assistant Secretary

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,

[Corporate Seal]

by

Treasurer

Attest:

Assistant Secretary

Form Approved:

Attorney

SCHEDULE A

Item 1: (a) General Electric Company, a New York corporation, with headquarters offices at 3135 Easton Turnpike, Fairfield, Connecticut 06431, acting through its Transportation Systems Business Operations, having offices at 2901 East Lake Road, Erie, Pennsylvania 16531.

(b) General Motors Corporation, a Delaware corporation, with offices at 3044 West Grand Boulevard, Detroit, Michigan 48202, acting through its Electro-Motive Division, having offices at La Grange, Illinois 60525.

Item 2: (a) General Electric Company (hereinafter in this Schedule A called GE) warrants to the Railroad that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. Except as may otherwise be agreed in a writing signed by authorized representatives of GE and the Railroad, the foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two (2) years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that the Equipment delivered by GE under this Agreement does not meet the warranties specified above, and the Railroad notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect, including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse, a repaired or replacement part. If requested by GE, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Railroad (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or

STATE OF CALIFORNIA

)

)

ss.:

CITY AND COUNTY OF SAN FRANCISCO

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On this ____ day of July, 1988, before me personally appeared Edward F. Grady, to me personally known, who, being by me duly sworn, says that he is the treasurer of ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires:

Notary Public-California
City and County of
San Francisco

application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than GE. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to Equipment at any time without incurring any obligations to install, at GE's expense, the same on other Equipment sold by GE.

GE warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to GE. GE further agrees that the Railroad as well as GE may to the extent permitted by law take and prosecute claims against vendors of specialties purchased by GE for incorporation in the Equipment manufactured by GE for the breach of any warranty by the vendors with respect to such specialties. GE and the Railroad each agree to notify the other prior to the assertion of any claim by them against any such vendors of specialties. If GE determines that it has no interest in any such claim asserted by the Railroad, GE agrees to assign to the Railroad, solely for the purpose of making and prosecuting any such claim, all of the rights which GE has against such vendor for the breach of warranty or other representation respecting the Equipment manufactured by it. The word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes of other than GE's manufacture or design.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE AND EXCEPT AS SET FORTH UNDER ITEM 3(a) BELOW.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including but not limited to, loss of profit or revenues, loss of use of units of Equipment manufactured by GE or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of the Railroad's customers for such damages.

(b) General Motors ("GM") warrants to the Railroad that each unit of the Equipment manufactured or rebuilt by it hereunder will be free from defects in material, workmanship and title under normal use and service, will be of the kind and quality described in the Specification referred to in Article 2 of this Agreement and will be suitable for the ordinary purposes for which such equipment is used. Except as may otherwise be agreed in a writing signed by authorized representatives of GM and the Railroad, the foregoing warranty is exclusive and in lieu of all other warranties whether written, oral, statutory or implied. THERE ARE NO WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT SHALL ANY WARRANTIES EXTEND BEYOND THREE (3) YEARS FROM DATE OF SHIPMENT. If it appears within three (3) years from the date of shipment by GM that a unit of Equipment delivered hereunder by GM does not meet the warranties specified above, and the Railroad notifies GM promptly, GM, after verification as to condition and usage and identification of faulty workmanship or materials, shall correct any defect including non-conformance with the Specifications, at its option, either by repairing any defective part or parts made available to GM or by making available at its plant or warehouse, a repaired or replacement part. If requested by GM, the railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GM.

The liability of GM to the Railroad (except as to title) arising out of the supplying of any unit of the Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in such units as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GM shall have no liability for any unit of the Equipment or part thereof built by it which becomes defective by reason of improper storage or application, wear, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than GM.

The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GM. It is understood that GM has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GM's expense, the same on other locomotives sold by GM.

GM agrees to use its best efforts to include, as a condition of its purchase order with the vendor of any specialty purchased by it for incorporation in the units of Equipment manufactured by it, or to otherwise obtain an agreement by such vendor to the effect that all warranty agreements and representations, if any, made by such vendor with respect to such specialty may be enforced by the Railroad, its successors and assigns, in the Railroad's own name or in the name of such successor or assign, by GM, in such Builder's own name, or by GM and the Railroad, its successor or assign jointly; provided, however, that if any vendor does not accept such an agreement and GM so notifies the Railroad, GM shall have no obligation to the Railroad under this sentence if such an agreement is not contained in any such purchase otherwise obtained. GM further agrees that, whether or not such an agreement is contained in any such purchase order, the Railroad as well as GM may to the extent permitted by law take and prosecute claims against vendors of specialties purchased by GM for incorporation in the units of Equipment manufactured by GM for the breach of any warranty by the vendors with respect to such specialties. GM and the Railroad each agree to notify the other prior to the assertion of any claim by them against any such vendors of specialties. If GM determines that it has no interest in any such claim asserted by the Railroad, GM agrees to assign to the Railroad, solely for the purpose of making and prosecuting any such claim, all of the rights which GM has against such vendor for the breach of warranty or other representation respecting the units of Equipment manufactured by it. The word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes.

- Item 3: (a) Except in cases of design specified by the Railroad and not developed or purported to be developed by GE, and articles and materials specified by the Railroad and not manufactured by GE, GE warrants for itself that the units of Equipment furnished by it hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Railroad due to such breach. In case

any unit of Equipment supplied by GE or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such unit of Equipment or part thereof is enjoined, GE shall, at its expense and option, either procure for the Railroad the right to continue using said unit of Equipment or part thereof, or replace same within six months of such injunction with noninfringing equipment or part thereof acceptable to the Railroad, or modify same so it becomes noninfringing, or remove the unit of Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad, but in each case without impairing the operational capability of such Equipment. The preceding shall not apply to the use of any unit of Equipment or part thereof furnished hereunder in connection with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement. The Railroad will give notice to GE of any claim known to the Railroad from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE to the Railroad for patent infringement by the Equipment or any part thereof.

(b) Except in cases of articles or materials specified by the Railroad and not manufactured by GM and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by GM, GM agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of the units of Equipment supplied by GM because of the use in or about the construction or operation of any of the unit of Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any United States or Canadian patents or other right. In case said unit of Equipment, or any part thereof, is held to constitute infringement and the use of said unit of Equipment or part is enjoined, GM shall at its option and at its own expense, either procure for the Railroad the right to continue using said unit of Equipment or part, or replace same with noninfringing equipment, or modify it so it becomes noninfringing, or remove the entire unit of Equipment and refund the Purchase Price and the

transportation and installation costs thereof. The Railroad likewise will indemnify, protect and hold GM harmless from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against GM because of the use in or about the construction or operation of any unit of Equipment of any article or material specified by the Railroad and not manufactured by GM or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by GM which infringes or is claimed to infringe on any patent or other right. GM agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad and its assigns every claim, right and cause of action which GM has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by GM for use in or about the construction or operation of any unit of Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. GM further agrees to execute and deliver to the railroad and its assigns or the user of units of Equipment supplied by it all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. GM will give notice to the Railroad of any claim known to GM under which liability may be imposed upon the Railroad hereunder and the Railroad will give notice to GM of any claim known to the Railroad under which liability may be imposed upon GM hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

SCHEDULE B

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Road Numbers and Serial Number Inclusive</u>	<u>Estimated Time and Place of Delivery</u>
General Electric 4000 horse- power, 4- axle road freight locomotive	General Electric Company	B40-8 41A313788 Revision Dated 1/4/88	Erie, Pennsyl- vania	35	\$1,075,000	\$37,642,500	Road Numbers 8040-8074	7/22/88 through 11/11/88; delivery is FOB Erie, Pennsylvania
General Motors 3800 horse- power, 4- axle road freight locomotive	General Motors Corp.	EMD Order No. 876054	La Grange, Illinois	15	\$1,100,000	\$16,500,000	Serial Numbers 876054-1 to 876054-15 Road Numbers 9620-9634	8/1/88 through 9/30/88 Delivery is FOB LaGrange, Illinois

CSA
NOTARIZED
COPY

CONDITIONAL SALE AGREEMENT

July 20, 1988

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, MARGARET H. C. HZEIH do hereby certify that I am a notary public in and of the State of New York and further certify that I have examined a fully executed and acknowledged counterpart of a certain conditional sale agreement, dated as of July 1, 1988, by and among the St. Louis Southwestern Railway Company, General Electric Company and General Motors Corporation and compared it to the copy being submitted herewith and have found the copy to be complete and identical to the original in all respects.

Margaret H. C. Hzeih
Notary Public

[Seal]

My Commission Expires:

MARGARET H. C. HZEIH
Notary Public, State of New York
No. 41-4845432
Qualified in Queens County
Certificate Filed in New York County
Commission Expires June 1, 1990